

C O P Y

State of New Hampshire  
OFFICE OF ATTORNEY-GENERAL

December 23, 1955

Louis C. Wyman, Attorney General

Attorney General

Honorable Charles Griffin, Director  
Division of Employment Security

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CONCORD, N.H.

Dear Mr. Griffin:

You have inquired whether The State of New Hampshire may enter into a rental purchase contract for the construction of a building to house your Division of Employment Security. You have further inquired, if the answer to the foregoing question is in the affirmative, who is authorized to execute such a contract on behalf of the State. You have further advised that in the foregoing arrangement it is contemplated that no funds will be required of The State of New Hampshire but that all funds to purchase such a building will come from the federal government and the State would act merely as a nominee for the purposes of contract. You further advise at the conclusion of the rental purchase agreement the building would be owned outright by The State of New Hampshire.

My answer to your first question is in the affirmative. My answer to the second question is that such a contract, subject to provisions and limitations as indicated below, may lawfully be executed by the Governor, with the approval of the Council.

Clearly, neither the Director of Employment Security nor the Governor and Council may exercise the appropriation function which is solely the prerogative of the General Court. However, if the terms of a contract for a lease-purchase acquisition of an office building are so worded as to make certain that The State of New Hampshire is not liable either for the lease-purchase or any part of the purchase price, whether by rent or otherwise, whether as principal, surety, guarantor, or in any manner, and said contract further clearly provides that both parties thereto contemplate solely federal appropriation as the sole source of funds for purchase of said building by rent or otherwise, and it is further, in said contract, made entirely clear that The State of New Hampshire appears as a contracting party therein solely as nominee in order to comply with federal regulations and that the contract shall be so worded that the contractor shall hold The State of New Hampshire harmless by appropriate insurance against public or private liability of any type, such a contract would in my opinion be within the Governor's lawful authority to execute and within the authority of the Council to approve.

Honorable Charles Griffin

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If in this manner The State of New Hampshire stands to gain a new office building which at the conclusion of the rental purchase period shall pass to the State with title to said building being reserved in the favor of the contractor until the expiration of the purchase period, with the further provision that all funds for payment therefor including land and building shall be solely supplied by the federal government and that should the federal government default or fail to appropriate such sums, The State of New Hampshire is not liable and shall not be required, under the terms of the contract, to advance any sums of money in any respect whatever, it would appear that such an arrangement violates no existing law in this State and it would be, in fact, highly beneficial to The State of New Hampshire.

Sincerely,

Louis C. Wyman  
Attorney General

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